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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/492, 170	06/19/95	ALBECKER	W

WALTER J ALBECKER  
838 S MAY  
CHICAGO IL 60607

35M1/1015

EXAMINER

BROWN, P

ART UNIT

PAPER NUMBER

3507

DATE MAILED:

10/15/96

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.  
08/492,170

Applicant(s)

Albecker III

Examiner

Peter Brown

Group Art Unit

3507

 Responsive to communication(s) filed on Aug 26, 1996 This action is **FINAL**. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

 Claim(s) 1-21 is/are pending in the application.

Of the above, claim(s) 1-10, 12, and 15 is/are withdrawn from consideration.

 Claim(s) \_\_\_\_\_ is/are allowed. Claim(s) 11, 13, 14, and 16-21 is/are rejected. Claim(s) \_\_\_\_\_ is/are objected to. Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

 See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner. The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

 Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

 Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3507

1. Claims 1-10, 12, and 15 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected species. Election was made **without** traverse in Paper No. 3.
2. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language in the claim directed to the upper portion of the face "being on average oriented at a higher angle....", is confusing and unclear, a better description would be to define an average pitch of the upper and lower portions relative to a horizontal plane, as set forth in claim 11.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 13, 14, 16-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Harris or Kohn in view of Eidam.

Both Harris (fig. 1) and Kohn (fig. 1) show generally wedge shaped foundations with convex lumbar support thereon, and which also disclose an upper portion with an average pitch at a greater angle relative to the horizontal than that

Art Unit: 3507

of the lower portion. Note that to have formed the foundation of Harris as a cushion member, would have been obvious, as inflatable cushions and foam cushions are functional equivalents and readily interchangeable (see the cited patent to Raftery).

While the supports do not show an overlying cushion member, to have provided such for additional comfort, would have been an obvious modification to one with ordinary skill in the art, as such is shown to be conventional by Eidam (fig. 2), who discloses a foundation 20 with a softer cushion 22 thereon.

The ILD firmness of the foundation and overlying cushion is considered a matter of design choice.

Regarding claim 18, the obtuse angle of the Kohn foundation appears to be in the range set forth.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Harris or Kohn in view of Eidam as applied to claims 11,13,14,16-18 and 21 above, and further in view of Argento.

To have added a seat cushion to the foundation of Harris or Kohn would have been obvious in view of the suggestion of Argento (fig. 1).

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Harris or Kohn in view of Eidam as applied to claims 11,13,14,16-18 and 21 above, and further in view of Morrell et al.

Art Unit: 3507

To have added a separate legrest cushion for increased occupant comfort, would have been obvious in view of Morrell et al (fig. 5).

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Snow, Radford, Kampner, Willey, and Raftery show various wedge shaped support foundations.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Brown whose telephone number is (703) 308-2103.

prb  
October 10, 1996

  
PETER R. BROWN  
PRIMARY EXAMINER  
ART UNIT 357